

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

SUBCOMMITTEE ON SALES TAX

Call to Order: By **CHAIRMAN BOB DEPRATU**, on February 19, 1999 at 10:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Others Present: Gordon Morris, Montana Association of Counties
Terry Johnson, Legislative Fiscal Division
Mary Bryson, Department of Revenue
Jeff Miller, Department of Revenue
Jerry Leonard, Department of Revenue
Sen. Alvin Ellis, Jr.

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary: SB 135, SB 143, SB 157

DISCUSSION ON SB 143

SEN. DEPRATU asked if any of the staff had any of the requested information for the committee from the previous meetings, and **Mr. Miller** provided a memo on due dates and filing obligations, **EXHIBIT (tas41b01)** .

Motion/Vote: SEN. DEPRATU MOVED TO CHANGE THE DUE DATE FOR SALES TAX TO THE LAST DAY OF THE MONTH FOLLOWING THE CLOSE OF THE QUARTER. Motion carried 3-0.

Mr. Miller then provided a handout, "State Comparison on the Taxation of Food, Machinery, and Equipment," dated February 19, 1999, **EXHIBIT(tas41b02)**.

Mr. Miller reminded the committee that the first part of this information was in response to **SEN. STANG'S** concern that food available to be purchased with food stamps would be tax exempt. He said that **SB 143**, as it is presented today, does include the tax on soft drinks, candy, chewing gum, and U-bake items, and if the food stamp standard were to be included, these items would have to come out of **SB 143** as it is written today. He said that the Department had not done an analysis of the fiscal impact, but the revenue estimates created so far do include taxation of those items. **SEN. DEPRATU** asked if the Department could provide that fiscal impact information by the next meeting of the committee, and **Mr. Miller** said the Department would provide that.

The second portion of Exhibit (2) was on sales of machinery and equipment, and **Mr. Miller** pointed out that the trend has been toward exempting the purchase of all industrial and agricultural machinery and equipment, although some states continue to tax. Also, generally, sales of used machinery and equipment are not taxable if sold by the owner. He also pointed out the information on the sale of mining equipment, and the sheet setting out how North Dakota deals with the sales and use tax for farm machinery and farm irrigation equipment.

A discussion ensued among the committee members regarding how to handle used farm equipment and whether it should be taxed depending on how it is sold, and also how a trade would be handled if, for instance, a thrasher was traded in for a different piece of farm equipment, because of the "like kind" language. **Ms. Bryson** said that the definition of "sales price" makes the trade in of property of like kind clear, and defines "like kind." **Mr. Heiman** said he would do some checking on the "like kind" situation and how that is handled.

Motion/Vote: SEN. STANG MOVED THAT ALL ITEMS SOLD AT AUCTION WOULD BE TAXABLE. Motion carried 3-0.

The committee then discussed the handling of sales of mining equipment and the effect of the business property tax. **SEN. STANG** asked if the Department could provide some comparisons on what businesses pay today in business equipment tax and what they

are going to pay under the sales tax, and **Ms. Bryson** said that the Department could provide some general information, but probably could not provide a very fine analysis specific to Montana. **SEN. STANG** said that any comparison the committee could have would be helpful.

Section 61, Information -- confidentiality -- agreements with another state, no changes.

Section 62, Sales tax and use tax account:

SEN. DEPRATU asked if a business would be required to have a separate trust account to accommodate the sales tax, and **Mr. Miller** said it is not provided for in this bill and is not contemplated.

Section 63, Disposition of sales tax and use tax revenue -- legislative appropriation:

Mr. Johnson said, in terms of the whole earmarking issue, that there has been an interim committee that has looked at earmarking for the last two bienniums and have made considerable recommendations to de-earmark a lot of revenues. **SEN. GLASER** answered by saying that if this money is not earmarked to education, this is a dead bill. **Mr. Johnson** referred to 63(a) and said it does not earmark it. **SEN. GLASER** said that it says it goes to the General Fund for state aid to public schools. **SEN. STANG** referred to the lottery proceeds which were also to be for state aid to public schools, but those funds end up in the General Fund and all the funds are commingled. He suggested that perhaps that needed to be clarified. **Ms. Bryson** said that there is a distribution mechanism that the Department has been working on that makes it very clear how the money gets to the public schools, and the Department could provide that for the committee to look at. She said it is part of the Governor's tax reform proposal. **Ms. Bryson** said the Department would look at how best to handle this situation and how the companion bills deal with it.

Section 64, Credit for sales tax and use tax -- definitions, no changes.

Section 65, Credit for sales tax and use tax:

Mr. Miller said that what is being set up here is a macro view of household income to then apply as a means test as to how to award back a credit for exemption, and is a good, solid view of a means test in trying to get the relief to those who are of least means.

SEN. DEPRATU asked how nonresidents of Montana could be prevented from taking advantage of this, and **Mr. Miller** said these people will have to file an individual income tax return. A discussion followed dealing with making people aware of these various tax credits, and that it should not be the responsibility of just the Department of Revenue to see that that is done.

Section 66, Credit for sales tax and use tax -- filing date -- extension, no changes.

Section 67, Examination of credit claims -- adjustments -- delivery of notices and demands, no changes.

Section 68, Penalties for violation:

Ms. Bryson told the committee that a bill will be coming from the Department on the standardized penalty and interest, and she suggested that a coordination clause could be added to this bill.

Section 69, University system funding, no changes.

Section 70, Section 33-7-410, MCA, is amended to read: "33-7-410. Taxation:

SEN. DEPRATU said there are more and more questions about tax exempt organizations and whether they are really fully charitable. **Mr. Miller** said the Department would welcome further discussion on this matter, because he was reading it to mean to the extent that one of these nonprofit organizations is engaged in an ongoing business operation, they would be subject to the sales tax, whereas under (b), the once-a-year Christmas tree sale by the Boy Scouts would not be taxed. **Mr. Heiman** pointed out that these two sections only apply to a particular type of fraternal organization that is organized under the insurance laws.

SEN. DEPRATU asked about hospitals that have created health club facilities and whether they would be taxed, and **Mr. Morris** said they would not be exempt from the sales tax if they are engaged in ongoing business. **Mr. Miller** asked what the difference was between Section 70 and Section 71, and **Mr. Morris** said that they are the same except that one refers to the resort tax. He said Section 70 is void if Article VIII, Section 17 is declared unconstitutional, and vice versa on Section 71. **Ms. Bryson** said that the code that relates to charitable organizations being exempt is not amended to allow an exemption from the sales tax, and **Mr. Heiman** said that was correct.

Section 72, Section 61-3-502, MCA, is amended to read: "61-3-502. Sales tax on new motor vehicles -- exemptions:

SEN. STANG asked why heavy trucks were excluded, and **SEN. DEPRATU** said he thought they came under a different classification and are taxed on a flat fee. **Mr. Morris** added that they don't pay the current 1.5% on registration, either, so this is only the one-ton vehicles that are required to be registered under the 2%.

SEN. DEPRATU asked about the driver training vehicles, and **Mr. Miller** said he read this to say that they may not have been registered when they were sold. **SEN. DEPRATU** said that these cars are titled in the name of the school district, and this was put into law so that car could qualify for the 1.5% sales tax as opposed to the 2% ad valorem as a courtesy to the school districts. He said he did not know how that would apply to the sales tax, except that a person will pay the 4% sales tax on the value, so there probably is no effect.

Section 73, Sales tax and use tax on used vehicles -- distribution by county treasurer:

SEN. GLASER asked about a person who buys a used car, they pay the sales tax like they were buying a new car, and he wondered if they also pay the 1.4%. **SEN. DEPRATU** said the 1.4% will go away for the first year on a used car, and a person will pay the 4% when they purchase a used car.

SEN. DEPRATU asked how leased vehicles will be handled, and **Mr. Miller** referred the committee to Sections 31 and 32. **SEN. DEPRATU** thought that that referred to rental companies, and he was referring to a new vehicle that is leased for a period longer than 30 days. He asked the Department to check on that and clarify it for the committee the next time they meet.

A discussion ensued regarding whether a Tribal member who purchases a vehicle would have to pay the sales tax and how that is handled, and **Ms. Bryson** said she would check on that and make sure that this bill is clarified in that regard.

Section 74, Transition, no changes.

Section 75, Election:

SEN. GLASER said if **CI-75** stands, this whole section would have to be revised. **SEN. DEPRATU** agreed that would have to be dealt with when a decision is made on **CI-75**.

Section 76, Special election, no changes.

Section 77, Codification instruction, no changes.

Section 78, Saving clause, no changes.

Section 79, Severability, no changes.

Section 80, Effective date, no changes.

Section 81, Applicability:

Ms. Bryson said that just from the Department's perspective, she did not believe they could make a January 1, 2000, implementation date, and **SEN. DEPRATU** said that all of this would have to be fine-tuned. **SEN. STANG** said the date of the election needed to be clarified also.

Section 82, Contingent voidness, no changes.

Section 83, Coordination, no changes.

SEN. DEPRATU reminded the committee that they would not be meeting until Tuesday, March 2, 1999.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. BOB DEPRATU, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas41bad)